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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1928.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, and STATE OF PENNSYLVANIA,
Complainants,

vs.

STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO,
Defendants.

STATE OF MISSOURI, STATE OF KENTUCKY, STATE OF TENNESSEE, STATE OF LOUISIANA, STATE OF MISSISSIPPI, and STATE OF ARKANSAS,
Intervening Defendants.

No. 7, Original.

STATE OF MICHIGAN
Complainant,

vs.

STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO,
Defendants.

No. 11, Original.

STATE OF NEW YORK,
Complainant,

vs.

STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO,
Defendants.

No. 12, Original.

NOTICE, MOTION FOR LEAVE TO PRESENT PETITION FOR LEAVE TO INTERVENE AS DEFENDANT AND INTERVENTION PETITION.

CITY OF CHICAGO,
by SAMUEL A. ETTELSON,
Corporation Counsel,
Solicitor and of Counsel for Petitioner.

HAWKINS & LOOMIS CO., LAW PRINTERS, CHICAGO

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1928.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, and STATE OF PENNSYLVANIA, Complainants, *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants.	No. 7, Original.
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STATE OF MICHIGAN, Complainant, *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants.	No. 11, Original.
STATE OF NEW YORK, Complainant *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants.	No. 12, Original.

NOTICE.

To HONORABLE JOHN W. REYNOLDS,
Attorney General for Wisconsin,
Madison, Wisconsin,
HONORABLE HERMAN L. EKERN,
Special Assistant Attorney General for Wisconsin,
208 *South LaSalle Street, Chicago, Illinois,*

HONORABLE RAYMOND T. JACKSON,
Special Assistant Attorney General for Wisconsin,
c/o HONORABLE NEWTON D. BAKER,
Union Trust Building,
Cleveland, Ohio,

HONORABLE HERBERT H. NAUJOKS,
Assistant Attorney General for Wisconsin,
Madison, Wisconsin,

HONORABLE G. A. YOUNGQUIST,
Attorney General for Minnesota,
St. Paul, Minnesota,

HONORABLE GILBERT BETTMAN,
Attorney General for Ohio,
Columbus, Ohio,

HONORABLE NEWTON D. BAKER,
Special Assistant Attorney General for Ohio,
Union Trust Building,
Cleveland, Ohio,

HONORABLE CYRUS E. WOODS,
Attorney General for Pennsylvania,
Harrisburg, Pennsylvania,

HONORABLE WILBER M. BRUCKER,
Attorney General for Michigan,
Lansing, Michigan,

HONORABLE HAMILTON WARD,
Attorney General for New York,
Albany New York,

HONORABLE ALBERT J. DANAHER,
Deputy Attorney General for New York,
Albany, New York,
Solicitors for Complainants:

PLEASE TAKE NOTICE that at the opening of the Supreme Court of the United States on Monday the 15th day of April, 1929, the City of Chicago will present motion for leave to file intervening petition praying that it be permitted to be made an intervening defendant in the above entitled causes and to participate in the hearings before the Special Master upon the re-reference order of January 14, 1929, and in any further proceedings herein, such evidence as may be now in the record affecting the intervening petitioner to have the same force and effect as if the intervening petitioner had previously been a party to the proceedings.

CITY OF CHICAGO,
By SAMUEL A. ETTELSON,
Corporation Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1928.

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STATE OF MISSOURI, STATE OF KENTUCKY, STATE OF TENNESSEE, STATE OF LOUISIANA, STATE OF MISSISSIPPI, and STATE OF ARKANSAS, Intervening Defendants.	
STATE OF MICHIGAN, Complainant, *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants.	No. 11, Original.
STATE OF NEW YORK, Complainant, *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants.	No. 12, Original.

MOTION.

Now comes the City of Chicago, a municipal corporation of the State of Illinois, and moves the Court for leave to present and file its petition praying that it may be permitted to

be made an intervening defendant herein and to participate in the hearings before the Special Master upon the re-reference order of January 14, 1929, and in any further proceedings herein, such evidence as may be now in the record affecting the intervening petitioner to have the same force and effect as if the intervening petitioner had previously been a party to the proceedings.

CITY OF CHICAGO,
By SAMUEL A. ETTELSON,
Corporation Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1928.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, and STATE OF PENNSYLVANIA, Complainants, vs. STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants, ——— STATE OF MISSOURI, STATE OF KENTUCKY, STATE OF TENNESSEE, STATE OF LOUISIANA, STATE OF MISSISSIPPI, and STATE OF ARKANSAS, Intervening Defendants.	No. 7, Original.
STATE OF MICHIGAN, Complainant, vs. STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants.	No. 11, Original.
STATE OF NEW YORK, Complainant, vs. STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants.	No. 12, Original.

PETITION.

The petitioner, the City of Chicago, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Illinois, shows:

1. The petitioner was originally organized and incorporated as a city during the year 1837, pursuant to the provi-

sions of the statutes and laws of the State of Illinois then in force relating to the organization and incorporation of cities and villages. The people of the City of Chicago, at an election duly held, duly adopted and accepted an act of the General Assembly of the State of Illinois entitled "An Act to provide for the incorporation of cities and villages," approved April 10, 1872, in force July 1, 1872. The said act, among other things, empowers the city council of the said City of Chicago to construct and keep in repair, culverts, drains, sewers and cess-pools; to regulate the use thereof; to deepen, widen, dock, cover, wall, alter or change channel of water courses; to construct and keep in repair canals and slips for the accommodation of commerce; to erect and keep in repair public landing places, wharves, docks and levees; to regulate and control the use of public and private landing places, wharves, docks and levees; to provide for the cleansing and purification of waters, water courses and canals and the drainage or filling of ponds on private property whenever necessary to prevent or abate nuisances; to establish and maintain a fire department; to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases; to establish and maintain a water works system for the purpose of furnishing residents and inhabitants of the said city with water for the various uses of such inhabitants, such as drinking and quenching of thirst, cooking, bathing, manufacturing, prevention and extinquishment of fire and other uses to which water is ordinarily put by the residents and inhabitants of a city. The said act further provides that the city shall have jurisdiction upon all waters within or bordering on the same to the extent of three miles beyond the limits of the city or village, but not to exceed the limits of the state, and that it may prevent or punish any pollution or injury to the stream or source of water or to such water works, its jurisdiction for such purposes extending five miles beyond its corporate limits or so

far as its water works may extend. The acts of the State of Illinois relating to the governing and powers of cities and villages, in force between the incorporation of the City of Chicago in 1837 and the passage of the said Act of 1872, granted powers to the city council similar to the powers herein enumerated as possessed by the city council under the said Cities and Villages Act of 1872.

2. Under an act of the general assembly of the State of Illinois entitled "An Act to create sanitary districts and to remove obstructions in the DesPlaines and Illinois River," approved May 29, 1889, in force July 1, 1889, the City of Chicago was obligated to furnish, has furnished and is now furnishing water from and by means of its water works at cost to the following named cities and villages located within the corporate territorial limits of the defendant the Sanitary District of Chicago—

Niles Center
Niles
Park Ridge
Tessville
River Grove
Elmwood Park
River Forest
Oak Park
Berwyn
Cicero
Blue Island
Calumet Park (Burr Oak)
Riverdale
Dalton
Harvey
Burnham
Calumet City
Markham
N. Riverside
Evergreen Park
Summit
Westchester
Broadview
E. Hazelcrest
Phoenix (Specialville)
Posen
Hazelcrest
Stickney
Forestview
Elmwood Park
Norwood Park
Loyden Township

3. Since the organization and incorporation of the City of Chicago, the only available water supply for the inhabitants and residents of said city has been and is now the waters of Lake Michigan, upon the shores of which lake the city is located, extending a distance of twenty-three and one-half miles

from the boundary line between Illinois and Indiana northerly to the southern corporate limits of the City of Evanston. Extending through the corporate limits of the City of Chicago and substantially in the heart of same, are the Chicago River, its various branches, such as the North Branch, the South Branch, the West Fork of the South Branch, the South Fork of the South Branch and the East and West Arms of said South Fork. Along the banks of said rivers and channels, navigable waters of the United States, various and sundry industries, business houses and plants of the city have been built and established. Connecting with the said rivers are the Main Drainage Canal and North Shore Channel built by the Sanitary District of Chicago, likewise such navigable waters. Through the southern portion of the territory of Chicago, the Calumet River and its branch, the Little Calumet, extends, which connects with Lake Calumet and with the Calumet Sag Channel of the Sanitary District of Chicago extending from the Little Calumet River to the Main Drainage Canal at Sag, Illinois, likewise navigable waters of the United States. The said waters of the Chicago River and its branches, Calumet and the Little Calumet River, and the other waters connecting with them, together with the waters of Lake Michigan in the vicinity of Chicago, are all physically and commercially inter-related and constitute, together with others, the waters of the Port of Chicago.

4. The water works system of Chicago was established by the City of Chicago about the year 1854, and thereafter about the year 1856 the City of Chicago established a sewer system. Since the establishment of the said water works and sewer system by the City of Chicago on the dates mentioned, the said water works and sewer systems have been enlarged and developed by the construction and building of pumping stations, intakes, tunnels, water pipes, sewers and other appurtenances, and the development of said systems of water works and sewers has progressed from the dates of their establish-

ment as the necessities of the residents and inhabitants of Chicago required, so that there exist at the present time and have existed for a great number of years past, complete water works and sewer systems whereby the residents and inhabitants of Chicago have been served and provided with their domestic water supply, and the sewage wastes and drainage of the City of Chicago have been disposed of by means of outlets therefor provided, and by such systems the lives of the people of Chicago have been preserved, their health has been protected and their public welfare, convenience and prosperity has been promoted. As a part of said water works system, the City of Chicago has maintained water intakes and cribs at various places in Lake Michigan some miles from the lake shore, and through such cribs or intakes and tunnels the water has been conveyed to the pumping stations, water works and land tunnels of the city, and thereby distributed to the residents, inhabitants and manufacturing and industrial plants of the city. In connection with the establishment and maintenance of said sewer system, the City of Chicago built and established sewers and intercepting sewers and outlets by which the sewage and drainage of the city was largely emptied into the Chicago River and its various branches.

5. The Sanitary District of Chicago, upwards of twenty years ago, constructed and maintained intercepting sewers by means of which the sewage and drainage that had been emptied directly into the lake from the sewers built by the City of Chicago, were carried and drained to the Chicago River and its branches. The opening of the Main Drainage Canal of the Sanitary District on January 17, 1900, furnished an outlet for all the sewage and drainage of the city at all times to the DesPlaines River.

6. Prior to the construction of the said Main Drainage Canal by the Sanitary District, and beginning with the year 1854, and until the present time, the City of Chicago has pro-

cured for its domestic water supply from Lake Michigan such water as was required, as it had and has the paramount, natural and public right to do. From the year 1848, the date of the opening of the Illinois and Michigan Canal by the State of Illinois, until the year 1865, a certain amount of water was pumped from the Chicago River to the said canal to meet the needs of navigation thereon. From the year 1865 to the year 1872 through an arrangement with the Canal Commissioners of the Illinois and Michigan Canal, the City of Chicago caused an amount of water to be pumped from the Chicago River into the Illinois and Michigan Canal, and thence to the DesPlaines River, for the purpose of discharging into same at ordinary times the sewage, and in addition an amount of water equal approximately to the average rain water run-off of the Chicago River Drainage area, in order to keep up and maintain navigation in the Chicago River, and to remove nuisance therein and thereon. In the year 1865 (Illinois Laws 1865, page 83), the legislature of Illinois authorized the City of Chicago to rebuild the summit level of the Illinois and Michigan Canal on the deep cut plan, whereby a gravity flow would be provided from the lake through the canal in its summit level to the DesPlaines River. By the year 1872, this improvement had been made in the summit level of the canal, and a larger quantity of water was thus withdrawn by gravity from the Chicago River through the Illinois and Michigan Canal to the DesPlaines River for the purpose of keeping up and maintaining navigation in the Chicago River and removing nuisances therein and thereon caused by the sewage and drainage. The amount of sewage and water withdrawn from the Chicago River by means of the said Illinois and Michigan Canal after it was constructed on the deep cut plan, exceeded the average rain water run-off of the Chicago River drainage area and the amount of the sewage of the city. This condition existed until the year 1881, when pursuant to action of the general assembly of Illinois (Illinois

Laws 1881, page 159) pumps were established at the northern terminus of the Illinois and Michigan Canal to discharge through the canal from the Chicago River a greater amount of sewage, drainage and water in order to maintain and keep up navigation in the Chicago River and other waters, and remove nuisances therein and thereon. The said pumps were established, and from that date until the opening of the Main Drainage Canal on January 17, 1900, an amount of sewage and water was discharged from the Chicago River by means of the Illinois and Michigan Canal to the DesPlaines River greatly in excess of the amount of the sewage and drainage of the city. After the opening of the Main Drainage Canal on January 17, 1900, which replaced the Illinois and Michigan Canal and furnished a larger outlet for the sewage and drainage, no drainage or sewage at any time was permitted to be discharged into Lake Michigan, but it was at all times discharged to the DesPlaines River. Thus, from the year 1865 and continuously, the sewage and drainage of the City of Chicago together with a certain amount of water direct from Lake Michigan to keep up navigation by removing nuisances on the Chicago River and its branches has been substantially at all times discharged to the DesPlaines River away from its water supply, and prior to 1900, the opening of the Main Drainage Canal, the only times sewage and drainage found their way into the lake were when storms upon the Chicago River drainage area exceeded the discharge capacity of the Illinois and Michigan Canal to the DesPlaines River.

7. The City of Chicago and the residents and inhabitants thereof, have enjoyed for many years a water supply unpolluted by the sewage wastes and drainage of the city and its environs, and the City of Chicago has developed and maintained its water supply works and water works system and now maintains them, relying upon Lake Michigan water which goes into its water works system, being unpolluted and uncontaminated by said sewage wastes and drainage. If the sew-

age, artificially treated to the greatest practicable extent known in the art, and the wastes and drainage at storm times, are discharged into Lake Michigan, its water supply will become polluted and contaminated, requiring the re-location of all its cribs and intakes, the construction of new tunnels, the construction, establishment and maintenance of a complete water filtering system, and, in general, the rehabilitation of its entire water works system as the City is informed and believes and so states to be the fact at a cost of upwards of one hundred and twenty-three million dollars. In addition, it will be necessary to change its combined sewer system to what is known as a separate sewer system, whereby one system would carry the sewage and another system would carry the drainage, street wash and other similar wastes. The cost of a separate sewer system of this character, as the City is informed and believes and so states to be the fact would be upwards of three hundred and thirty million dollars. Upon the installation of such works for its water supply and the establishment of the said separate sewer systems, the water supply of Chicago and its people would still be polluted and contaminated. The only barrier against infection by means of water-borne diseases would be the aforesaid re-location of the water intakes in Lake Michigan and the establishment and maintenance of a complete water filtration plant, a mechanical barrier certain at times to fail of complete performance thus endangering the health of the people of Chicago.

8. The City of Chicago has created, now owns and maintains many public bathing beaches on the shores of Lake Michigan and has constructed and owns many public parks along such waters. These contribute greatly to the health, comfort and happiness of the people of the City of Chicago. If the sewage artificially treated to the greatest practicable extent, together with waste and drainage at storm times be discharged into Lake Michigan, the waters thereof will be-

come increasingly polluted and the uses and benefits from such parks and public bathing beaches will be gradually lessened and eventually completely destroyed; as will also yacht and commercial harbors now owned and operated by the city along the shores of Lake Michigan which will become less and less usable and all of the waters of the Port of Chicago including Lake Michigan adjoining the shores of the City of Chicago will become so polluted as to interfere with and obstruct the conduct of navigation thereon.

9. The City of Chicago is without means to finance any such extensive construction program for its water works system and for its sewer system. The territorial limits of the City of Chicago are wholly within those of the Sanitary District of Chicago, and there is a very small amount in value of the taxable property of the Sanitary District outside the limits of the City of Chicago. The Sanitary District, as your petitioner is informed and believes, and upon such information and belief states the fact to be, has laid out a program for the construction of artificial sewage purification works to meet the requirements of the Court's order and opinion of January 14, 1929, estimated to cost upwards of $176,000,000. The discharge of the artificially treated sewage and storm water into Lake Michigan will cause damage to the public utilities as petitioner is informed and believes and so states to be the fact of upwards of one hundred and eighty-six million dollars, by depriving them of condensing water for the various plants located on the Chicago River or its branches, which damage will be sustained by the residents and inhabitants principally of Chicago through the necessary increase of utility rates to take care of this damage. The economic burden which would thus fall upon Chicago by, through and as the result of the discharge of artificially treated sewage and storm flow and wastes into Lake Michigan, can not be borne by the taxpayers and people of Chicago, and if such burden is visited upon them, the prosperity,

welfare and progress of the people of Chicago, and the business and commercial interests thereof, will be materially hampered and injured.

10. While various officials of the City of Chicago have known of the pendency of the above entitled suits instituted by the various states complainant, it has been understood by them and petitioner so alleges the fact to be that the complainants' bills do not seek a decree which would require the discharge of artificially treated sewage and wastes and storm flow into Lake Michigan. Furthermore, the City of Chicago and its officials have rested in the belief, as found and concluded by the Honorable Charles Evans Hughes, Special Master, that under the Acts of Congress in such case made and provided, the chief of engineers and Secretary of War were authorized to regulate the diversion by the Sanitary District of Chicago, and that in such regulation the rights and interests of the City of Chicago and its people would be considered, and that they would not be deprived of their paramount and natural right in the public waters, to take, use and dispose of such waters of Lake Michigan as is required for domestic purposes, and that the sewage wastes and drainage of the city could be discharged and disposed of by the city, in such manner as would best promote the public welfare and convenience. The City of Chicago does not understand that it is the direction of the opinion and order of the Supreme Court of January 14, 1929, that sewage, untreated or treated to the greatest practicable extent known in the art (which purification can be attained only to the extent of eighty-five per cent of purity), including the wastes, drainage and storm flow of the city, should be discharged into Lake Michigan.

While, as before stated, it had been understood by the City of Chicago that the only purpose of complainants in the institution of the above entitled suits was to enjoin any unwar-

ranted portion of the diversion of water directly from Lake Michigan by the Sanitary District of Chicago, yet your petitioner is informed and believes, and upon such information states the fact to be, that counsel for complainants in the above entitled cause stated at the hearing before the Special Master on, to wit, March 29, 1929, that they would seek a decree which would require in its enforcement the discharge of the artificially treated sewage, including drainage storm water and wastes of the City of Chicago and its environs, into Lake Michigan. This is the first time that the officers of the City of Chicago have had any knowledge that any such decree would be sought.

Petitioner alleges that if the plan of complainants aforesaid be required by decree to be entered in the above entitled causes there will result a condition of nuisance in all of the waters of the Port of Chicago and a gross pollution of the domestic water supply of the City; that such pollution will inevitably produce grave epidemics of typhoid fever and other water born diseases resulting in the loss of many lives and much sickness and suffering, and that such infection will be spread through a territory with a radius of at least 500 miles from Chicago and will have a most harmful effect upon many of the citizens of the complainant states themselves.

Therefore, your petitioner, in performance of its duty to the residents, inhabitants, taxpayers and people of Chicago and of those other cities and villages within the limits of the Sanitary District depending upon the City of Chicago for their domestic water supplies, presents this petition, seeking to be made party thereto as intervening defendant, without, however, seeking any delay in the proceedings in said causes either before the Special Master, pursuant to the re-reference order of January 14, 1929, or before the Court, and that the City of Chicago as such intervening defendant should be permitted to participate in the hearings before the said Special Master upon said re-refer-

ence, offering such evidence as it may be advised to be appropriate, and likewise to participate in any hearings or proceedings before this Court upon the Special Master's report, it being understood that any and all evidence now offered and received, material and relevant, affecting the rights and interests of the City of Chicago, shall be treated as in evidence the same as if the City of Chicago had been a party at the time such evidence was offered and received.

Wherefore, your petitioner prays that it may be permitted to intervene herein and be made party hereto as intervening defendant in all of said causes, and that it be permitted to participate in the future proceedings before the Special Master pursuant to the re-reference order of this Court of January 14, 1929, offering such evidence as it may consider appropriate and relevant, and that it further be permitted to participate in any further proceedings or hearings before this Court upon the Special Master's report to be made and for such other and further relief as this Honorable Court may grant; and your petitioner will ever pray.

THE CITY OF CHICAGO,
By SAMUEL A. ETTELSON,
Its Corporation Counsel.

ence, offering such evidence as it may be advised to be appropriate, and likewise to participate in any hearings or proceedings before this Court upon the Special Master's report, it being understood that any and all evidence now offered and received, material and relevant, affecting the rights and interests of the City of Chicago, shall be treated as in evidence the same as if the City of Chicago had been a party at the time such evidence was offered and received.

Wherefore, your petitioner prays that it may be permitted to intervene herein and be made party hereto as intervening defendant in all of said causes, and that it be permitted to participate in the future proceedings before the Special Master pursuant to the re-reference order of this Court of January 14, 1929, offering such evidence as it may consider appropriate and relevant, and that it further be permitted to participate in any further proceedings or hearings before this Court upon the Special Master's report to be made and for such other and further relief as this Honorable Court may grant; and your petitioner will ever pray.

THE CITY OF CHICAGO,
By SAMUEL A. ETTELSON,
Its Corporation Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1928.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, and STATE OF PENNSYLVANIA, Complainants, *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants.	No. 7, Original.
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AFFIDAVIT.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

Samuel A. Ettelson, being first duly sworn, on oath deposes and says that he is the Corporation Counsel of the City

of Chicago; that he has read the foregoing petition for leave to intervene in the above entitled causes to which this affidavit is attached, and knows the contents of the same; that the allegations thereof are true to the knowledge of this affiant, except those allegations therein alleged to be upon information and belief, and those allegations this affiant verily believes to be true.

Further affiant saith not.

SAMUEL A. ETTELSON

Subscribed and sworn to before me this 10th day of April, A. D. 1929.

ESTELLE M. LARSON
Notary Public.